THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 19207 of 1995

28-11-2006

Between:-

G. Anoopkumar

Petitioner

And

Director General,
Coast Guard Headquarters,
National Stadium Complex,
New Delhi and two others.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 19207 of 1995

Oral order:

Heard Sri M.R.K. Chowdary, learned senior counsel for the petitioner. There is no representation on behalf of the respondents.

The petitioner assails the validity of the proceedings dated 13-07-1995 issued by the first respondent, which reads as under:

> *"1. The Judicial Review of the Coast Guard Court proceeding pertaining to your trial were conducted by the Chief Law Officer on 08 Jun 95 at DHQ-6 wherein you, your Defence Counsel and Prosecutor were present.*
>
> *2. The Director General Coast Guard after careful examination of the proceedings and the Review Report has decided not to interfere with the finding and sentence of the Coast Guard Court."*

While the petitioner was working as Deputy Commandant, Coast Guard Station, Visakhapatnam, the Coast Guard Court (for short 'the Court') convened to conduct a trial against the petitioner on a charge of a conduct prejudicial to good order and Coast Guard discipline, purportedly for a conduct proscribed under Section 44 of the Coast Guard Act, 1978 (Act No. 30 of 1978) (for short 'the Act').

The petitioner was alleged to have, while serving as an Executive Officer, Coast Guard Station, Vishakapatnam and officiating District Commander Number-6, during October, 1994, misused his

official telephones provided at his residence and office by making calls to a married lady using obscene and bad language. The petitioner was duly tried by the Court and by the order of the said Court dated 08-04-1995 the charge against the petitioner was found to have been established. The Court sentenced the petitioner to dismissal from service by its order dated 08-04-1995.

Thereupon, the petitioner sought judicial review under Section 117 of the Act. He asserts that the judicial review was conducted on 08-06-1995 by the Chief Law Officer, second respondent, and according to the petitioner, on the report of the second respondent, the first respondent passed the impugned order dated 13-07-1995 refusing to interfere with the sentence and order recorded by the Court.

In seeking judicial review under Section 117 of the Act, the petitioner urged that the proceedings of the Court and sentence imposed thereat dismissing him from service suffer from fatal infirmities. The principal challenge was on two grounds viz., (a) that the petitioner was earlier tried in C.C.No.513 of 1994 before the learned III-Metropolitan Magistrate, Vishakapatnam for the offences under Sections 506 and 509 of the Indian Penal Code. The said offences were compounded and consequently an order of acquittal dated 14-11-1994 was recorded by the learned III-Metropolitan Magistrate, Vishakapatnam and therefore in view of the bar contained in Section 68 of the Act, he could not be tried by the Court again for the same offences for which he was prosecuted and acquitted in C.C.No. 513 of 1994 by a criminal court of competent jurisdiction; and (b) that under Section 71 of the Act, the Director General, Inspector General or the Deputy Inspector General are conferred a discretion to decide where an officer serving under their command should be proceeded against for prosecution before the

criminal court or the Court, where both courts have jurisdiction to try a charge. Inasmuch as Section 71 of the Act enables a discretion and such discretion was earlier exercised; the petitioner prosecuted and was in C.C.No. 513 of 1994 acquitted, it is not open to the Coast Guard authorities to subject him again to prosecution under the provisions of the Act.

Except the bland and laconic order of the second respondent dated 13-07-1995, the petitioner is not aware of the decision making process and how the mind was applied by the respondents to his application for judicial review under Section 117 of the Act. The provisions of the Act relevant to consider the case presented in this writ petition are Sections 117 to 119 of the Act, which read as under:

> "**117. Judicial review by the Chief Law Officer**—(1) All proceedings of trials by Coast Guard Courts shall be reviewed by the Chief Law Officer either on his own motion or on application made to him within the prescribed time by any person aggrieved by any sentence or finding, and the Chief Law Officer shall transmit the report of such review together with such recommendations as may appear to him just and proper to the Director-General for his consideration and for such action as the Director-General may think fit.
> (2) Where any person aggrieved has made an application under sub-section (1) the Chief Law Officer may, if the circumstances of the case so require, give him an opportunity of being heard either in person or through a legal practitioner or an officer of the Coast Guard.
>
> **118. Consideration by the Director-General**—(1) On receipt of the report and recommendations, if any, under section 117, the Director-General shall in all cases of sentences of death, and in all cases where the Coast Guard Court is convened by the Central Government, and may, in other cases, transmit the proceedings and the report to the Central Government together with such recommendations as he may deem fit to make.
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> (2) Nothing in section 117 or this section shall authorize the Chief Law Officer or the Director-General to make any recommendation for setting aside, or the Central Government to set aside, an order of

acquittal passed under this Act.

> **119. Petitions to Central Government or Director-General against findings and sentences**--- Any person subject to this Act who considers himself aggrieved by a finding or sentence of any Coast Guard Court may present a petition to the Central Government or to the Director-General, and the Central Government or the Director-General, as the case may be, may pass such orders thereon as it or he may think fit."

On a true and fair construction of the provisions of Section 117 of the Act, it does not appear that a jurisdiction is conferred on the Chief Law Officer to conclusively review any order of sentence recorded by the Court. In terms of the provisions of Section 117 of the Act, the Chief Law Officer, the second respondent, is empowered either on the application made to him by a person aggrieved or on his own motion, to review all proceedings of a trial by the Court and submit a report together with his recommendations, as may appear (to the Chief Law Officer) to be just and proper, to the first respondent for his consideration and for such action as the Director General may think fit. Apparently, Section 117 of the Act is intended to make available the forensic expertise of the Chief Law Officer for vetting of the proceedings of the Court, for providing expert forensic guidance for the exercise of jurisdiction by the Director General, who is not legislatively assumed to having *ex-officio* expertise to judicial review the proceedings of the Court. On this view of the provisions of Section 117 of the Act, it does not appear to this court that the Chief Law Officer is required to communicate to a person aggrieved (on whose application judicial review is taken up by the Chief Law Officer) a copy of the recommendations made to the first respondent.

Section 118 of the Act obligates the Director General, on receipt of the report and recommendations of the Chief Law Officer under

Section 117 of the Act, in all cases where a sentence of death has been imposed and in all cases where the Court is convened by the Central Government to transmit the proceedings and report (received from the Chief Law Officer) to the Central Government together with his recommendations, as he considers appropriate. The exercise of power is mandatory in the above circumstances, but is obligatory in other cases (Section 118 (1) of the Act).

Section 119 of the Act enables any person aggrieved by the finding or sentence of any Court to petition either the Central Government or the Director General who are required to pass such orders thereon as they think fit. It is under Section 119 of the Act that a right is conferred on a person aggrieved to petition either the Central Government or the Director General and a corollary obligation inheres upon the Central Government or Director General, as the case may be, to pass appropriate orders.

Having regard to the nature of power conferred and corollary obligation of the Director General under Section 119 of the Act, on well established principles of administrative law, the conclusion appears irresistible that the decision of the Director General or the order passed by the Director General exercising jurisdiction, power and authority under Section 119 of the Act must be communicated to the person aggrieved, who has petitioned the Director General for exercise of power under Section 119 of the Act. As part of the same obligation and consistent with the principle that all public power is a trust to be exercised on a balancing of interests, of the rights of a person aggrieved with the rights of the society at large, the first respondent, exercising the power under Section 119 of the Act is required to record reasons for the decision. Reasons are inalienable principles of natural justice, which cannot be eschewed on jejune grounds that Section 119

of the Act expressly does not obligate the recording of reasons. Just as the natural justice principle of *audi alteram partem* is an emanation of Article 14 of the Constitution of India and even where a statutory provision is silent, principles of natural justice ought to be followed by public authorities exercising public power so too is the other equally important principle of natural justice obligated where public authority exercises a public power. As this court has concluded that Section 119 of the Act enacts an obligation on the Director General to take an appropriate decision as a corollary of the right of a person aggrieved to petition for relief and since Section 119 of the Act does not in terms exclude the recording of reasons, the general principles of natural justice viz., recording of reasons must be considered implicit in the exercise of power under Section 119 of the Act.

The order of the first respondent dated 13-07-1995 transgresses the above obligation of the first respondent implicit from the provisions of Section 119 of the Act. It contains no reason for the conclusion. Reasons are the links between the facts which animated the decision-making and the decision. The order of the first respondent dated 13-07-1995 is bereft of any reasons and does not disclose how the mind of the first respondent is applied to the objections of the petitioner as to the validity of the Court proceedings, which imposed the sentence (of dismissal) on him. The petitioner has raised important objections, vital to the jurisdiction of the court viz., objections under Sections 68 and 71 of the Act. The first respondent cannot escape the statutory responsibility of dealing with those objections under a fig leaf of silence. Where speech is mandatory, silence cannot be an option. The order of the first respondent is unsustainable. It beseeches invalidation and is accordingly set aside. The writ petition is allowed, but in the circumstances of the case, without costs.

The first respondent is directed to re-consider the report of the second respondent sent up to the first respondent pursuant to the application of the petitioner for judicial review; to take a decision under Section 119 of the Act and communicate a reasoned decision to the petitioner within a period of sixty (60) days from the date of receipt of a copy of this order.

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GODA RAGHURAM, J

Dated:28-11-2006
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